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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,394	07/24/2003	Jason Lieblich	RFS-001CP	9816

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KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
STATE STREET FINANCIAL CENTER
ONE LINCOLN STREET
BOSTON, MA 02111-2950

EXAMINER	
LOHN, JOSHUA A	
ART UNIT	**PAPER NUMBER**
2114	

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/626,394	LIEBLICH ET AL.	
	Examiner	Art Unit	
	Joshua A. Lohn	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10/1/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 22-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10, and 15-19 of copending Application No. 10/618,092. Although the conflicting claims are not identical, they are not patentably distinct from each other because: Claims 1 and 10 of the copending application discloses all the limitations of claim 22 of the instant application except for the storing action, which is inherent in the existence of the data on the system of claim 1 of the copending application, and the initiating of an exception handling routine, which is disclosed in dependent claim 10 of the copending application, where the notification is the initiation of a handling routine; Claim 16 of the copending application discloses all the limitations of claim 23 of the instant application; Claim 15 of the copending application discloses all the limitations of claim 24 of the instant

application; Claim 16 of the copending application discloses all the limitations of claim 25 of the instant application; Claim 18 of the copending application discloses all the limitations of claim 26 of the instant application; Claim 17 of the copending application discloses all the limitations of claim 27 of the instant application; and Claim 19 of the copending application discloses all the limitations of claim 28 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Harper et al., United States Patent number 6,629,266, filed November 17, 1999.

As per claim 22, Harper discloses a method of analyzing resources and events of a first computer comprising: (a) storing in a first database located within the first computer a first dataset describing the resource and event characteristics of the first computer at a first moment in time (Harper, col. 7, lines 34-46, where the first dataset being stored is the parameter information prior to the outage, and the database for storage is the stable storage, col. 7, lines 28-29); (b) storing in the first database a second dataset describing the resource and event characteristics of

the first computer at a second moment in time (Harper, col. 7, lines 56-61, where the second dataset is the current parameters being analyzed, which are stored in the stable storage as well, col. 7, lines 26-29); (c) comparing the first dataset and the second dataset in order to determine whether the differences indicate the occurrence of an exceptional event (Harper, col. 46-61, where the comparison is the prediction generated based upon comparison of current state to previous conditions); and (d) if an exceptional event has occurred, initiating an exception handling routine (Harper, col. 7, lines 59-61, where the exception handling routine is the rejuvenation triggered in response to the resource exhaustion prediction exception).

As per claim 24, Harper discloses wherein initiating an exception handling routine comprises notifying a human user of the exceptional event (Harper, col. 8, lines 1-7, where the rejuvenation routine can result in user notification).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper in view of Bliley et al., United States Patent number 6,622,264, filed November 22, 1999.

As per claim 23, Harper discloses all limitations depending from claim 22, but fails to disclose that the initiating an exception handling routine comprises notifying a second computer.

Bliley discloses utilizing a second computer in the handling of an exceptional event (Bliley, col. 3, line 62, through col. 4, line 5, where the second computer is the diagnostic system shown in figure 1).

It would have been obvious to one skilled in the art at the time of the invention to use the second computer of Bliley in the invention of Harper to allow for both local learning and system-wide learning.

This would have been obvious because Bliley discloses a system for analyzing parameter values to detect probable failures (Bliley, col. 4, lines 58-61), which can be utilized in analyzing failures of computer systems such as microprocessor machines (Bliley, col. 3, lines 57-61). Bliley further discloses providing a history of events and repairs for the system that allow for controlling the response to these events based upon past actions (Bliley, col. 5, lines 35-40). Harper discloses a similar system in which active learning also allows for improving the handling of events based upon previous parameter states (Harper, col. 7, lines 34-46). Bliley not only provides a historical response system, but provides the additional benefit of providing the learning information outside of the system experiencing the problems (Bliley, col. 4, lines 57-66). This second computer system provides for the ability to gather the historical information from a number of systems (Bliley, col. 4, lines 6-22), which would obvious benefit the system of Harper by allowing the learning mechanism of Harper to better detect exceptional conditions by learning form the fault states provided by all the operating systems (Harper, col. 7, lines 46-55, where additional outage causal information provides improved learning, and col. 6, lines 22-33, where the use of multiple system nodes is disclosed by Harper). This combined invention would

not only learn locally to react to exceptional situations, but would also allow for sending event information to a second system to allow for a global learning system.

As per claim 25, Harper and Bliley further disclose the method of claim 23 wherein the second computer comprises a server (Harper, col. 6, lines 28-30, where the node can execute service applications, making it a server).

As per claim 26, Harper and Bliley further disclose the method of claim 23, further comprising the step: (e) the second computer transmits a response to the first computer (Harper, col. 7, lines 59-61, where the rejuvenation agent can be executed based upon the prediction of the learning algorithm operating on the global history system of Bliley, col. 4, line 57, through col. 5, line 15).

As per claim 27, Harper and Bliley further disclose the method of claim 26, further comprising the step: (f) the second computer stores the notification of the exceptional event in a second database (Bliley, where all information is stored in the fault log structure, which is part of the storage system that is being interpreted to be a second database containing all the various storage units, col. 4, lines 15-22).

As per claim 28, Harper and Bliley further disclose the method of claim 27, further comprising the step: (g) the second computer stores the response in the second database (Bliley, col. 4, lines 6-14, where the storage of repair data would include the responses sent in reply to the exceptional events).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided on form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua A. Lohn whose telephone number is (571) 272-3661. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAL

SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER